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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Anthony X. Jarvis et al.

U.S. Patent No.: 7,757,066

Issue Date: July 13, 2010

Serial No.: 09/751,372

Filed: December 29, 2000

For: SYSTEM AND METHOD FOR EXECUTING
 VARIABLE LATENCY LOAD OPERATIONS IN A
 DATA PROCESSOR

Group No.: 2183

Examiner: Aimee J. Li

Confirmation No.: 8275

MAIL STOP PATENT EXT.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF DECISION ON REQUEST FOR
RECONSIDERATION OF PATENT TERM ADJUSTMENT AND NOTICE OF INTENT
TO ISSUE CERTIFICATE OF CORRECTION**

In response to the Decision on Request for Reconsideration of Patent Term Adjustment (the "Decision") dated October 4, 2010, the Applicant respectfully requests reconsideration of the Decision.

The Applicant agrees that the "A" delay totals 628 days (+628 days) and that the "C"

delay totals 963 days (+963 days). The Applicant also agrees that the “Applicant” delays total 153 days (–153 days).

The Applicant further agrees that the total time between three years from filing and issuance of the patent is 2,388 days (maximum length of “B” delay).

The Applicant disagrees with the Office’s conclusion on page 3 of the Decision that the 2,388-day period must be reduced by 963 days due to overlap with the “C” period. The Decision states the following:

The Office has determined that the period of overlap totals 963 days. It follows that the period of B delay is 321 days: 2388 days over three years minus 1104 days that are excluded *minus 963 days of overlap*. (Decision, page 3, emphasis added).

The “1104 days” represents 141 days for the first appeal and 963 days for the second appeal. The underlined statement is therefore **mutually exclusive** from the italicized statement – either the 963-day period forms part of the “B” delay and overlaps with the “C” delay, or the 963-day period is excluded from the “B” delay and cannot overlap with the “C” delay.

37 C.F.R. § 1.703(b) defines the “B” delay and specifically excludes the time spent on appeal from the “B” delay calculation. Pursuant to 37 C.F.R. § 1.703(b), the “B” delay in this case should be calculated as the 2,388-day period minus 141 days for the first appeal and 963 days for the second appeal. This gives a total “B” delay of 1,284 days. With the appeal periods excluded in the 1,284-day calculation, there is no overlap between the 1,284-day “B” calculation and the 963-day “C” calculation. Accordingly, the correct patent term adjustment is $(628 + 1,284 + 963 - 153)$, for a total of 2,722 days.

The Office basically asserts that the 963-day period for the successful appeal is excluded

from the “B” delay, then assumes that the 963-day period is included in the “B” delay and overlaps with the “C” delay. This is improper since the time spent on appeal is excluded from (and therefore does not form part of) the “B” delay.

This is likely why the PAIR system calculates the “Overlapping Days Between {A and B} or {A and C}.” The PAIR system does not appear to calculate the overlapping days between {B and C}. This is because the “B” delay calculation already excludes the “C” delay periods.

The Office errs when it claims that the time spent on successful appeal is excluded from the “B” period but that the time spent on successful appeal overlaps between the “B” and “C” periods. Since 37 C.F.R. § 1.703(b) specifically excludes the time spent on appeal, there can be no overlap between the “B” and “C” delays for a successful appeal. Otherwise, the Office would be awarding the Applicant a 963-day extension for the successful appeal as a “C” delay, then reducing the “B” delay by twice the 963-day extension (once by excluding the 963-day period, another by reducing the “B” delay due to overlap).

Therefore, the Applicant respectfully requests that the Office reconsider the determination of patent term adjustment and find that the Applicant is entitled to a patent term adjustment in the amount of 2,722 days.

If any issues arise, the Applicant respectfully invites the Office to contact the undersigned at the telephone number indicated below or at wmunck@munckcarter.com.

The Commissioner is hereby authorized to charge any fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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